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RL:0320

Proposal 199 RELATING TO PUBLIC ACCESS TO RECREATION AREAS

Statement for
Con Con Committee for
Environment, Agriculture, Conservation and Land
Public Hearing 16 August 1978

by
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Proposal 199 would amend Section 2 of Article X of the Constitution to provide for public access to recreational areas. This statement on the proposal does not reflect an institutional position of the University of Hawaii.

There is, without question, a greater need for public access to certain recreational areas, especially beaches. Provision for such access is perhaps of sufficient importance to justify its inclusion in the Constitution. We wish to call attention, however, to some problems with the particular provision proposed, and to raise a question as to its proper placement in the Constitution.

The need for better access is probably greatest in the case of beaches. With rare possible exception, the portions of beaches below the high water mark (defined by the courts as generally the vegetation line) are public property. Land mauka of this line, however, may be privately owned, even if geologically part of a beach. It is solely to the public part of the beaches that public access should be allowed.

Many natural reserves are also public property, and to many public natural reserves essentially unlimited public access is appropriate. However, some reserves, such as water reserves, are set aside for strict preservation. Allowance of general public access to some of these would be quite inappropriate. In some cases the present extent of prohibition of public access may be unwarranted. However, decisions as to the appropriately allowable degree of public access are best left to the executive branch of government.

Some natural reserves, furthermore, are privately owned, and to them public access cannot be assured except by permission of the owners or by their condemnation. Many recreation areas other than beaches and natural reserves also are privately owned. There are private swimming pools, courts, yards, gardens, and indoor areas used for recreational purposes. It was surely not the intent of the proposal to assure public access to these.

We suggest that a provision for public access might appropriately be worded as limiting, such access to public recreational areas such as beaches and those conservation areas and reserves in which public uses would not be detrimental to preserved resources.

The proposal wisely does not go into detail as to means for providing the public access, which may in many cases involve condemnation.